

M. E. BOALES

MARCH 19, 1958.—Committed to the Committee of the Whole House and ordered to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 2076]

The Committee on the Judiciary, to whom was referred the bill (H. R. 2076) for the relief of M. E. Boales, having considered the same, report favorably thereon with amendments and recommend that the bill do pass.

The amendments are as follows:

Page 1, line 6: Strike "\$30,000" and insert "\$5,000".

Page 2, lines 1 and 2: Strike "in excess of 10 per centum thereof".

PURPOSE

The purpose of the proposed legislation, amended in accordance with the recommendations of the committee, is to pay M. E. Boales of Daytona Beach, Fla., the sum of \$5,000 in full settlement of his claims against the United States for damage to his real property on the Halifax River in the State of Florida resulting from dredging operations carried out by the Secretary of the Army in 1952.

STATEMENT

Mr. Boales is the owner of a tract of land with about 600 feet of frontage on the Halifax River in Florida which is described as the land lying easterly of lot 2 to 6 inclusive, block 60, Higbee's Daytona. The Halifax River from Flagler Beach to Oak Hill was dredged as a part of the widening and deepening of the Intracoastal Waterway from Jacksonville to Miami, Fla., authorized by the act of Congress approved March 2, 1945 (59 Stat. 10, 16). The actual dredging operations were performed during the last week of October 1952 by the Hendry Corp. under Government contract. This bill is concerned with the effect that the disposition that was made of the spoil from the

dredging had on Mr. Boales' property. The contractor deposited this spoil in front of city-owned property next to Mr Boales' property. However some of that spoil spilled over and muck was pushed over to the area in front of Mr. Boales land. As a result Mr. Boales complains that the value of his land has been greatly reduced.

As is observed in the Army report to the committee on the bill, the Florida Inland Navigation District acquired a spoil-disposal easement from M. E. Boales and Dixie L. Boales on August 24, 1951 to permit the United States to deposit spoil on the submerged bottom in front of their upland property in Daytona Beach on the Halifax River. Mr. Boales has asserted that this permit to deposit spoil was conditioned upon that spoilage being placed in the manner specified in the permit. In this connection the easement grant contained a proviso which stated:

Provided That, consistent with good commercial dredging practice, proper care shall be exercised by the party of the second part, its officers, agents, servants and contractors, to protect the premises against avoidable [sic] injuries that may permanently impair the value of said premises.

The Department of the Army has indicated that it is opposed to the bill on the ground that the Florida Inland Navigation District undertook to furnish to the United States all land, easements, rights-of-way and spoil-disposal areas and hold the United States free from damages resulting from the work, and therefore that Mr. Boales should look to the Florida Inland Navigation District for any relief. In reply to this Mr. Boales points out that the easement was granted to the United States, and notes that although the broad authority provided for in the easement was granted still the actual work was done in a manner which did not comply with the provisions of the permit and the specifications which the contractor should have followed regarding the disposal of fill.

The committee has carefully considered this claim and has concluded that Mr. Boales is entitled to have his property put back into approximately the condition existing prior to the deposit of spoil from the dredging. On the basis of the evidence presented to the committee as to the cost of such work, this committee has determined that \$5,000 would be a fair payment. Accordingly the committee recommends that the bill be amended so as to provide for a payment of that amount, and recommends that the amended bill be considered favorably.

DEPARTMENT OF THE ARMY,
Washington, D. C., November 1, 1956.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request for the views of the Department of the Army with respect to H. R. 11725, 84th Congress, a bill for the relief of M. E. Boales.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, to M. E. Boales, of Daytona Beach, Florida, the sum of \$30,000. The payment of such sum shall be in full settlement of all claims against

the United States of M. E. Boales arising out of damage to his real property on and near the Halifax River in the State of Florida which was caused by dredging operations being carried out by the Secretary of the Army during the year 1952."

The Department of the Army is opposed to the above-mentioned bill.

The widening and deepening of the Intracoastal Waterway from Jacksonville to Miami, Fla., as set forth in House Document 740, 79th Congress, was authorized by the act of Congress approved March 2, 1945 (59 Stat. 10, 16). The project document provided that "local interests furnish free of cost to the United States all land, easements, rights-of-way, and spoil-disposal areas needed for new work and for subsequent maintenance when and as required; bear the cost of all alteration of bridges, cables, pipelines, and other structures made necessary by the improvement, and hold and save the United States free from damages resulting from the work." Pursuant to this authorization, the Corps of Engineers developed a project including dredging the Halifax River from Flagler Beach to Oak Hill. In furtherance of the project, the Florida Inland Navigation District on August 2, 1946, undertook to furnish free of cost to the United States all land, easements, rights-of-way and spoil-disposal areas and to hold and save the United States free from damages resulting from the work. These assurances were accepted by the Chief of Engineers on December 24, 1946. In furtherance of its undertaking, the Florida Inland Navigation District acquired a spoil-disposal easement from M. E. Boales and Dixie L. Boales on August 24, 1951, to permit the United States to deposit spoil on the submerged bottom in front of their upland property in Daytona Beach on the Halifax River.

Dredging operations were performed during the last week of October 1952 by the Hendry Corp. under Government contract. In accordance with the contract the contractor was allowed discretion as to the specific areas to be utilized in the disposal of spoil and, if necessary, obtain areas additional to those secured by the Government. Exercising its rights under the contract, the contractor elected to discharge all the spoil in the area involved in front of city-owned property adjacent to the claimant's property. At no time was the contractor's discharge pipe in front of the Boales' property. Under the terms of the easement, the Government had the privilege, but not the obligation, to deposit spoil on their property. However, following a complaint by Mr. Boales that the fill had not been placed where he desired it, a survey was made on November 6, 1952, which indicated that some spoil had run from the adjacent area onto the Boales' property. The Corps of Engineers immediately offered to have this material removed but Mr. Boales instead asked that additional dredging be accomplished beyond the scope of the contract. There being no justification for this action, the contract was not revised.

Since the widening and deepening project was accomplished under legislation requiring that local interests furnish lands, easements, rights-of-way, and spoil-disposal areas and hold and save the United States free from damages resulting from the work, Mr. Boales was advised that he should look to the Florida Inland Navigation District for any relief to which he might believe he is entitled. In view of the facts and circumstances of this case no liability in law or equity

rests upon the United States to compensate Mr. Boales for any damages incurred by him. Accordingly, the Department of the Army is opposed to the enactment of the bill.

The cost of this bill, if enacted, will be \$30,000.

The Bureau of the Budget advises that there is no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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